IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1342 OF 2005
ALONG WITH
CRIMINAL APPEAL NO.233 OF 2004

The State of Maharashtra).. Appellant

Versus

Jyoti Hareshwar @ Haresh Patil & ors.).. Respondents

Mrs.P.H.Kantharia, A.P.P., for the Appellant.

Mr.Kiran J.Kandoile for the Respondents.

CORAM: V.G. PALSHIKAR AND
SMT.NISHITA MHATRE, JJ.

DATED: 28TH APRIL 2005

P.C.:

. Criminal Application No.1342 of 2005 is directed against the judgment and order of acquittal under Section 307, whereas Criminal Appeal No.233 of 2004 is directed for enhancement of sentence recorded under Sections 326 and 324 of the Indian Penal Code giving the accused benefit of Probation of Offenders' Act. The learned trial Judge in paragraph 16 of his order has given cogent reasons why conviction under Section 307 of the Indian Penal Code for attempt to commit murder is not possible. The learned Judge then proceeds to observe that the accused is guilty under Sections 326 and 324 of the Indian Penal Code and has accordingly punished them but found that imprisonment may not be the only and proper

way to penalise the accused. He has, therefore, invoked the provisions of the Probation of Offenders' Act. There is no record of any previous conviction or for that matter any previous misconduct by the accused. In such circumstances, taking recourse to the provisions of the Probation of Offenders' Act cannot be seen an error of law resulting in miscarriage of justice. We, therefore, see no reason to interfere either in the acquittal under Section 307 of the Indian Penal Code or the sentence imposed. Both the Criminal Application and Criminal Appeal are, therefore, rejected.